

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SMALL BUSINESS BODYGUARD, INC.,

Plaintiff,

-against-

USDC SDNY
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DATE FILED: 10/29/14

HOUSE OF MOXIE, INC., et al,

Defendants.

14 Civ. 7170 (CM)

x

ORDER

McMahon, J.:

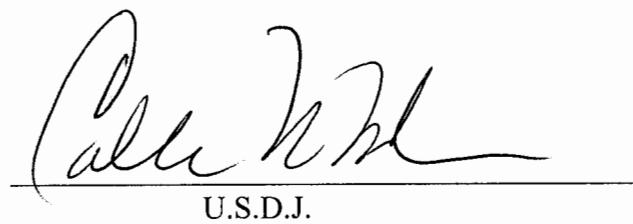
Last week, I received a letter from plaintiff's counsel, which caused me to conclude that "scrivener's error" in plaintiff's complaint had misled the court into dismissing its claim for copyright infringement (third cause of action).

Today, I reviewed a letter from defendant's counsel, which casts the facts of the matter in an entirely different light – and causes me to question the accuracy and completeness of the representations made yesterday by plaintiff's counsel.

As a result, I will require the plaintiff to move for leave to amend the complaint in order to re-assert the copyright infringement count. Such motion must have attached to it a copy of the proposed new complaint. It must also be supported by an affidavit on oath, attesting to the complete history of the issuance of the copyright registration that purportedly supports the maintenance of this action by plaintiff and responding to all issues raised in defendants' counsel's letter of October 27 – including issues relating to the purported difference in Author, Title, Claimant and Work. I am far less interested in posturing over potential sanctions than I am in learning the whole truth and nothing but about this copyright registration.

The motion for leave to amend, with supporting documentation, is due by next Friday, November 7. Responsive papers – in which defendants may argue futility of amendment if they can support their case – are due November 18. Reply papers are due November 21. No extensions will be granted.

Dated: October 29, 2014



A handwritten signature in black ink, appearing to read "Callahan", is written over a horizontal line. Below the line, the letters "U.S.D.J." are printed in a small, sans-serif font.

BY ECF TO ALL COUNSEL